

2015 NAR Issue Brief

Omnibus Appropriations Bill

Real Estate Provisions

Congress has passed sweeping legislation of more than two-thousand pages to fund the Federal Government Fiscal Year 2016. The legislation is expected to be signed into law by the President when it arrives at the White House. The new legislation will put an end to the series of stop-gap funding measures known as “Continuing Resolutions” that have funded the government the start of FY 2016 on October 1, 2015. This new bill will expire in September 2016. The real estate related provisions are listed below:

Federal Tax Policy

- **Mortgage Debt Forgiveness:** Authority extended for two years (2015 & 2016)
- **Mortgage Insurance Premium Deductibility:** Provisions allowing the deductibility of mortgage insurance premiums were extended for two years (2015 & 2016)
- **Immediate Expensing of Business Equipment and Certain Real Estate:** The expensing provision for equipment and certain real estate used by small- and mid-sized businesses is made permanent (section 179). The real estate includes leasehold improvements, certain restaurant improvements, and certain retail improvements. Moreover, the \$250K cap on this qualified real estate (which is half that of personal property) is being removed starting in 2016, so all business assets (real and personal) will have the same \$500K limit each year, and indexed for future inflation.
- **Bonus Depreciation:** Extends bonus depreciation treatment for five years. Moreover, the provision now includes a new category called “Qualified Improvement Property,” which is defined as an improvement to the interior portion of an existing non-residential commercial building (except for elevators, escalators, or enlargements). Thus, most leasehold improvements will now generally be eligible for immediate expensing for the smaller and mid-size businesses and for bonus depreciation (50% expensing) for the bigger companies.
- **Charitable Deduction:** The expired provision that gives a charitable deduction for contributions of real property for conservation purposes is made permanent.
- **Foreign Investment in Real Property Tax Act (FIRPTA):** The bill includes two significant FIRPTA provisions. The first allows overseas investors to own up to 10% of a publicly-traded U.S. REIT (up from 5%). The second provision allows foreign pension funds to own U.S. real property interests without triggering FIRPTA withholding tax. These changes are estimated to bring billions of dollars of foreign investment into the U.S. commercial real estate market.
- **Energy Tax Credit for New Homes:** The expired credit of \$1,000 to \$2,000 for energy-efficient new homes is extended for two years (2015 & 2016).

Business

- **EB-5 Program Extended:** A clean extension (no reforms) until Sept. 30, 2016.
- **Net Neutrality:** No amendments limiting implementation of net neutrality rules were included.
- **Internet Access Taxes:** The Internet Tax Freedom Act (ITFA), which bans state and local governments from imposing taxes on Internet access, expired October 1, 2015. The Omnibus extends the ban through October 1, 2016.
- **American Communities Survey (Census Bureau):** Does not convert the American Community Survey to voluntary status. Experts warn that making the ACS a voluntary survey would undermine the validity of the survey’s results. NAR and other private entities depend upon the ACS in their day-to-day business planning. NAR uses the Survey to benchmark its housing data series.

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Commercial

- **Leasehold Improvement Depreciation:** The 15-year depreciation period for leasehold improvements provision is extended permanently. Only a two-year extension was expected on this priority item.
- **Energy Efficient Commercial Buildings (Section 179D):** The agreement extends for two years (2015 & 2016) the energy-efficient commercial buildings deduction.
- **Internet Sales Tax Fairness:** Advocates of Internet Sales Tax Fairness bills had hoped their language would be attached to the Omnibus, but it was not included in the package.

Conventional Finance

- **Housing Finance Reform:** Explicitly prohibits the sale, transfer and liquidation of the Treasury Department's senior preferred stock holdings in the GSEs without legislative action; provision sunsets January 1, 2018.
- **Mortgage Servicing Asset Study:** Provides funding for a federal government study of the appropriate capital requirements for mortgage servicing assets. Study to examine the effects of Basel III and the National Credit Union Administration's capital requirements on mortgage serving assets.

Environment/Land Use

- **Waters of the U.S. (WOTUS) Prohibition:** No provision was included to prohibit the EPA from spending funds to implement the EPA's Waters of the U.S. rule.
- **Wildfire Funding** – Additional funds were provided to fight wildfires, during the worst wildfire season in the nation's history.
- **Land and Water Conservation Fund (LWCF):** The LWCF was funded at \$450 million, with 50% provided to state and local governments for land acquisition and recreational activities.

Federal Housing

- **Direct Endorsement for Rural Housing:** Today, every guaranteed loan must be individually reviewed by Rural Housing Service staff. This is time consuming, and slows the loan process. Both the Veterans Affairs loan guaranty and the FHA mortgage insurance program utilize approved private lenders for direct endorsement. Bill provision provides RHS with the authority to approve direct endorsed lenders which will accelerate loan processing time.
- **HAWK Program:** Continues exiting ban on HUD implementing the HAWK program, which would have allowed homeowners to participate in housing counseling and receive a reduction in their mortgage insurance premiums.
- **Eminent Domain Seizure of Mortgages:** Provision prohibits FHA and Ginnie Mae from insuring or securitizing a loan on a home that has been seized through eminent domain. This mirrors a policy of the GSEs, and is designed to eliminate the local practice of seizing mortgages via eminent domain authority in order to prevent foreclosure.
- **Enhanced Income Verification for Rural Housing:** In the multifamily arena, public housing authorities and assisted housing managers are required to verify the income for their subsidized residents. However, rural properties were not provided the same access to IRS and Department of Labor data as similar properties insured by HUD. Language in the Omnibus allows for access to the same income verification data for both agencies. This will streamline and ease burdens on rural assisted property owners.

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- **HOME Funding:** HOME funding provides grants to state and local governments to produce affordable housing for low-income families. Eligible uses of HOME include downpayment assistance, rental assistance, rehabilitation of affordable housing, and development. The Omnibus provides \$950 million for HOME funding, a \$50 million increase over 2015.
- **National Flood Insurance Program:** Maintains funding levels for the National Flood Insurance Program and homeowner's advocate, with small increases for flood mapping and mitigation activities.